



24 OCT 2007

IP GROUP OF DLA PIPER US LLP
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In re Application of :
BOURLION et al. :
Application No.: 10/589,182 :
PCT No.: PCT/FR05/00338 :
Int. Filing: 11 February 2005 :
Priority Date: 11 February 2004 :
Attorney Docket No.: BDM-06-1208 :
For: EXPLORATION DEVICE TO MONITOR :
THE PENETRATION OF AN :
INSTRUMENT IN AN ANATOMIC :
STRUCTURE :

DECISION ON PETITION
UNDER 37 CFR 1.47(a)

This decision is issued in response to applicants' "Petition under 37 CFR 1.47(a)" filed 11 October 2007 to accept the application without the signature of joint inventor, Gerard Vanacker. The \$200 petition fee has been submitted.

BACKGROUND

On 11 February 2005, applicants filed international application PCT/FR05/00338 which claimed a priority date 11 February 2004. Pursuant to 37 CFR 1.495, the period for paying the basic national fee in the United States expired 30 months from the priority date, 11 August 2006.

On 11 August 2006, applicants filed a transmittal for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a translation of the international application; and a preliminary amendment.

On 26 April 2007, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a two-month time limit in which to respond.

On 11 October 2007, applicants filed a petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17(g), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the nonsigning joint inventor.

Applicants here have submitted the appropriate petition fee. Item (1) is therefore satisfied.

Regarding item (2), the petition asserts that the nonsigning inventor has refused to execute the declaration. Before a refusal to execute the application can be claimed, section 409.03(d) of the MPEP requires that the nonsigning inventor be provided with a copy of the complete application, including specification, drawings and claims. The MPEP also requires "a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made."

Here, the evidence submitted to demonstrate Gerard Vanacker's refusal to execute the application papers is contained in the declaration (of facts under 37 CFR 1.47(a)) included in the petition, and the exhibits thereto. These materials provide the required firsthand statement regarding the delivery to the nonsigning inventor of a copy of the complete application, and the nonsigning inventor's refusal to execute the application, with documentary evidence supporting the statement. Item (2) is therefore satisfied.

Regarding item (3), applicants have provided the last known address of the nonsigning inventor. Accordingly, item (3) is therefore satisfied.

Regarding item (4), section 409.03(a) of the Manual of Patent Examining Procedure ("MPEP") states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Here, applicants have filed declarations executed by two of the three inventors and including an unsigned signature box identifying the nonsigning inventor (Gerard Vanacker). This declaration is treated as having been executed by the available inventors on their behalf and on behalf of the nonsigning inventor. Item (4) is therefore satisfied.

For the reasons stated above, it is appropriate to accept the application without the signature of Gerard Vanacker under 37 CFR 1.47(a) at this time.

CONCLUSION


The petition under 37 CFR 1.47(a) is **GRANTED**.

The application will be given an international filing date of 11 February 2005 under 35 U.S.C. 363, and a date of **11 October 2007** under 35 U.S.C. 371(c).

As provided in 37 CFR 1.47(c), a notice of the filing of this application will be forwarded to the nonsigning inventor at his last known address of record.

A notice of the filing of the application under 37 CFR 1.47(c) will be published in the Official Gazette.

This application is being returned to the United States Designated/Elected Office for processing in accordance with this decision.


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